

LAW OFFICES OF RAHUL WANCHOO

Attorneys for Defendant

Fuchuen Dihai Shipping Co. Ltd.

Empire State Building

350 Fifth Avenue, Suite 3304

New York, New York 10118

Phone:(201) 882-0303

Fax: (201) 301-3576

E-mail: rwanchoo@wanchoolaw.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

TRANSFIELD ER CAPE LIMITED

Plaintiff,

- against -

FUCHUEN DIHAI SHIPPING CO. LTD., AND
ZHEJIANG FUCHUEN CO. LTD.

Defendants.

ECF CASE

07 cv 4528 (MGC)

**AFFIDAVIT IN SUPPORT OF
DEFENDANT'S MOTION TO
DISMISS COMPLAINT AND
VACATE THE ATTACHMENT**

-----X

STATE OF NEW JERSEY)
) ss:
 COUNTY OF BERGEN)

RAHUL WANCHOO, being duly sworn, deposes and says:

1. I am a member of the Bar of the State of New York, and I am

admitted to practice before this Honorable Court.

2. I am a partner in the firm of Law Offices of Rahul Wanchoo, attorneys for Defendant, Fuchuen Dihai Shipping Co. Ltd. ("Fuchuen"). I am fully familiar with the matters set forth in this affidavit, and my knowledge of the matters set forth in this affidavit is based on information provided to me by Fuchuen, its agents and attorneys and my own independent research.

3. I submit this affidavit in support of Defendant, Fuchuen's motion to dismiss the Verified Complaint filed by the Plaintiff, Transfield ER Cape Limited ("Transfield") on May 30, 2007 and vacate the maritime attachment. A copy of the Verified Complaint is annexed as *Exhibit A* to this affidavit.

4. Transfield sues Fuchuen for breach of a settlement agreement. Transfield alleges that Fuchuen failed to "pay the amounts due and owing under the agreement and has failed to adhere to the terms of the settlement." *Ex. A ¶¶ 15-18.*

5. Fuchuen filed its Answer in this action on Friday, June 22, 2007. A copy of the Answer is annexed as *Exhibit B* to this affidavit.

6. Transfield had commenced a prior action in this Court on June 10, 2004, 04-cv-4395 (WHP), and obtained a Rule B maritime attachment against Fuchuen on June 17, 2004. A copy of the 2004 Verified Complaint is annexed as *Exhibit C* to this affidavit.

7. The 2004 and 2007 Verified Complaints are almost identical except that the new Complaint now alleges detention damages of \$100,000 per day versus \$80,000 per day alleged in the old Complaint. Plaintiff's claim has thus increased from \$1,980,000 to \$2,475,000, exclusive of interest, attorneys' fees and arbitration costs. Both claims arise under the same charter party contract dated on or about November 28, 2003 and allege the same cause of action. (*Ex. B ¶ 10 and. Ex. C ¶ 8*). The new Complaint also alleges an alter ego claim against defendant, Zhejiang Fuchuen Co. Ltd. (*Ex. B ¶¶ 20-30*).

8. Transfield voluntarily dismissed the 2004 complaint in September 2004 because none of Fuchuen's assets were located in the jurisdiction of this Court. A copy of Transfield's lawyer's letter to Judge Pauley dated September 9, 2004 and the Order of Discontinuance dated September 17, 2004 are annexed as *Exhibits D and E*, respectively.

9. I am advised that the underlying dispute between Transfield and Fuchuen was settled in 2005. A copy of Paul Rodgers' declaration dated June 27, 2007, which discusses in detail the underlying claim and the settlement agreement is annexed as *Exhibit F*.

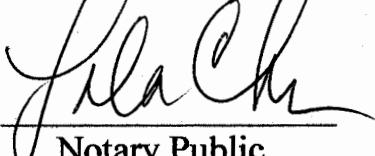
10. A copy of an online search made through ICRIS of the Hong Kong Company's register of Transfield is annexed as *Exhibit G*.

11. A copy of an online search made through ICRIS of the Hong Kong Company's register of Fuchuen is annexed as *Exhibit H*.

Rahul Wanchoo

RAHUL WANCHOO

Sworn to before me this
2nd day of July, 2007



Notary Public

LILA CHIN
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES FEB. 18, 2012